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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/814,229	03/21/2001	Roland Lippoldt	DT-3841	2010
30377	7590	07/06/2005	EXAMINER	
DAVID TOREN, ESQ. ABELMAN FRAYNE & SCHWAB 666 THIRD AVENUE NEW YORK, NY 10017-5621				LUGO, CARLOS
		ART UNIT		PAPER NUMBER
		3676		

DATE MAILED: 07/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/814,229	LIPPOLDT ET AL.
	Examiner	Art Unit
	Carlos Lugo	3676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 May 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 20-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 20-34 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 13 January 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

1. This Office Action is in response to applicant's amendment filed on May 12, 2005.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

- The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. **Claims 20-34 are rejected** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 20 and 34 recites the limitation "the at least one spring means holds the at least one catch hook with the first final stop on the guide member" in lines 18 and 19 of claim 20 and in lines 17 and 18 in claim 34.

It is unclear how the spring will hold the catch hook if the spring is designed to retract the catch hook to the closing position. The spring 17 is used to move the catch hook from the position in Figure 1 to the position illustrated in Figure 3. In order to continue with the examination, the limitation will not be considered.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claim 34 is rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 3,806,174 to Herman in view of US Pat No 3,403,934 to Butts.

Herman discloses a locking device comprising at least one swiveling lever (21) pivotally supported about an axis of rotation (about 26) in a housing (14 and 18) and including a projecting guide element (20); at least one drive (26) for pivoting at least on swiveling lever about the axis of rotation; at least one catch hook (25) supported on the swiveling lever (at 24) at a distance from the axis of rotation on a pivot axis (24) and having, at a radial distance from the pivot axis (24), a cam segment (30) concentric thereto, into which the guide element (20) of the swiveling lever engages; and at least one spring means (34) for biasing the at least one catch hook in a closing direction until the guide element (20) bears against a first final stop of the cam segment (Figures 3-5).

A closure (12) has at least one closing edge (15,16 and 33), which is gripped upon the closure is locked with the housing (14 and 18) so that in an opening position of the at least one catch hook (25) and with the at least one swiveling lever (8) pivoted in the closing direction, the at least one spring means (34) holds the at least one catch hook (25) with the first final stop (Figure 5) on the guide element (30) for pivoting the at least one catch hook with the at least one swiveling lever in the closing direction, wherein with the at least one catch hook impinging on the closing edge and the swiveling lever still pivoted in the closing direction until the guide element moves, within the cam segment, to a second final stop (Figure 3) thereof. The at least one swiveling lever moves the pivot axis with the at least one catch hook in the closing direction of the closure, with the at least one catch hook

pulling the closure into the closing position. The catch hook is adapted to be moved through an opening (between 33 and 12).

However, Herman fails to disclose that the at least one catch hook sealingly pulls back the closure against a housing seal. Herman only discloses that the catch hook will pull back the closure (Figures 3-5). Herman does not disclose a seal between the frame or housing and the closure.

Butts teaches that it is well known in the art to have a seal (22) between a closure and a housing (12 and 20) in combination with a catch hook (16), so that when the catch hook pulls the closure in the closing position, it will create a sealing engagement between the closure and the housing.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a seal, as taught by Butts, with the device as described by Herman, in order to seal between the closure and the housing so as to protect the interior from contaminants.

#### ***Allowable Subject Matter***

6. **Claim 20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action. Claims 21-33 would also be allowed because the claims depend from claim 20.**

#### ***Response to Arguments***

7. Applicant's arguments filed on May 12, 2005 have been fully considered but they are not persuasive.

Regarding applicant's arguments that the amendment to claims 20 and 34 overcomes the 112nd paragraph rejection (Page 15 Line 8), the current amendment does not overcome the 112nd paragraph rejection.

According to the current specification, the spring 7 will pull the catch hook 12 so as to move counter-clockwise with respect to Figure 1 (paragraph 43 and 45). The spring do not holds the catch hook with the first final stop (14'); the spring just pulls. Therefore, until the applicant clearly amends the claims, the rejection is maintained.

As to applicant's arguments that Herman, as modified by Butts, fails to disclose the invention as now claimed in claim 34 (Page 17 Line 13), the amendment does not overcomes the rejection.

The claim language do not requires that the hook move through a slot shaped aperture. The claim language just requires that the hook is capable of performing the movement through an aperture. Applicant is reminded that it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. And in the current case, Herman's hook is capable of moving through a slot (between 33 and 12). Therefore, Herman, as modified by Butts discloses the invention as claimed and the rejection is maintained.

### *Conclusion*

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo whose telephone number 571-272-7058. The examiner can normally be reached on 9-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

C.L.

Carlos Lugo  
AU 3676

June 28, 2005



BRIAN E. GLESSNER  
PRIMARY EXAMINER